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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Sebastian Nido-Valenzuela,

Defendant.

CR 22-1608-005-TUC-RM (LCK)

Plea Agreement

The United States of America and the defendant, Sebastian Nido-Valenzuela, agree to the following disposition of this matter:

PLEA

The defendant agrees to plead guilty to Count Six of the Indictment, charging the defendant with a violation of Title 18, United States Code, Section and 554(a), Smuggling Goods from the United States, a felony offense. The defendant also agrees to the Forfeiture Allegation of the Indictment. The government agrees to dismiss Count One of the Indictment against the defendant at the time of sentencing.

ELEMENTS OF THE CRIME

The essential elements of Smuggling Goods from the United States are that:

(A) The defendant knowingly attempted to export from the United States any merchandise, article, or object; and

(B) The exportation of the merchandise, article, or object was contrary to any law or regulation of the United States.

1 (C) The defendant knew the exportation of the merchandise, article, or object
2 was contrary to any law or regulation of the United States.

3 STIPULATIONS, TERMS AND AGREEMENTS

4 The defendant understands the guilty plea is conditioned upon the following terms,
5 stipulations, and requirements:

6 Maximum Penalties: The defendant understands and agrees that the maximum penalty for
7 the offense to which he is pleading are a fine of \$250,000, a maximum term of ten (10)
8 years imprisonment, or both, and a maximum term of three (3) years supervised release.

9 The defendant agrees to pay a fine unless the defendant establishes the applicability
10 of the exceptions contained in § 5E1.2(e) of the Sentencing Guidelines.

11 Special Assessment: The defendant understands that in accordance with Title 18,
12 United States Code, Section 3013, upon entry of judgment of conviction, there shall be
13 assessed a \$100.00 special assessment for each felony count.

14 Immigration consequence: The defendant recognizes that pleading guilty may have
15 consequences with respect to his immigration status if the defendant is not a citizen of the
16 United States. Under federal law, a broad range of crimes are removable offenses,
17 including the offense(s) to which the defendant is pleading guilty. Removal and other
18 immigration consequences are the subject of a separate proceeding, however, and the
19 defendant understands that no one, including the defendant's attorney or the district court,
20 can predict to a certainty the effect of the defendant's conviction on the defendant's
21 immigration status. The defendant nevertheless affirms that he wants to plead guilty
22 regardless of any immigration consequences that this plea may entail, even if the
23 consequence is the defendant's automatic removal from the United States.

24 Agreement Regarding Sentencing:

25 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
26 stipulate and agree that the below guideline calculations are appropriate for the charge for
27 which the defendant is pleading guilty, if the defendant is entitled to Acceptance of
28 Responsibility:

1	Base Offense Level (§ 2M5.2(a)(1))	26
2	Mitigating Role (§ 3B1.2)	-2
3	Acceptance (§ 3E1.1(a) and (b))	<u>-3</u>
4	Total Adjusted Offense Level	21

5 b. Sentencing Range: Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United
6 States and the defendant stipulate and agree that the following are the applicable guideline
7 ranges for the offense, based on the defendant's criminal history category (CHC):

- 8 37 - 46 months imprisonment if the defendant is in CH category I;
9 41 - 51 months imprisonment if the defendant is in CH category II;
10 46 - 57 months imprisonment if the defendant is in CH category III;
11 57 - 71 months imprisonment if the defendant is in CH category IV;
12 70 - 87 months imprisonment if the defendant is in CH category V;
13 77 - 96 months imprisonment if the defendant is in CH category VI.

14 The parties stipulate that the defendant's sentence shall not exceed the low end of the
15 applicable guideline range as calculated under U.S.S.G. § 1B1.1(a). The defendant may
16 withdraw from the plea agreement if he/she receives a sentence that exceeds the low end
17 of the applicable guideline range as calculated under U.S.S.G. § 1B1.1(a).

18 c. If the defendant moves for any adjustments in Chapters Two, Three, or Four
19 of the Sentencing Guidelines or any "departures" from the Sentencing Guidelines, the
20 government may withdraw from this agreement. If the defendant argues for a variance
21 under 18 U.S.C. 3553(a) in support of a sentence, the government may oppose the
22 requested variance. The government, however, will not withdraw from the agreement if the
23 defendant argues for, and the Court grants, a variance.

24 d. Assets and Financial Responsibility. The defendant shall make a full
25 accounting of all assets in which the defendant has any legal or equitable interest. The
26 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
27 transfer any such assets or property before sentencing, without the prior approval of the
28 United States (provided, however, that no prior approval will be required for routine, day-

1 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
2 Office to immediately obtain a credit report as to the defendant in order to evaluate the
3 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
4 also shall make full disclosure of all current and projected assets to the U.S. Probation
5 Office immediately and prior to the termination of the defendant's supervised release or
6 probation, such disclosures to be shared with the U.S. Attorney's Office, including the
7 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
8 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
9 under this agreement and the law.

10 e. Acceptance of Responsibility. If the defendant makes full and complete
11 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
12 commission of the offense, and if the defendant demonstrates an acceptance of
13 responsibility for this offense up to and including the time of sentencing, the United States
14 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
15 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
16 the United States will move the Court for an additional one-level reduction in the applicable
17 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

18 f. The defendant understands and agrees that this plea agreement contains all
19 the terms, conditions and stipulations regarding sentencing. If the defendant requests or
20 if the Court authorizes any reduction of sentence, either by departure or variance, not
21 specifically agreed to in writing by the parties, the government may withdraw from the
22 plea agreement.

23 g. If the Court departs from the terms and conditions set forth in this plea
24 agreement, either party may withdraw.

25 h. If the Court, after reviewing this plea agreement, concludes any provision is
26 inappropriate, it may reject the plea agreement and allow the defendant an opportunity to
27 withdraw the defendant's guilty plea, all pursuant to Rule 11(c)(5) and Rule 11(d)(2)(A),
28 Fed. R. Crim. P.

1 i. The defendant understands that if the defendant violates any of the conditions
2 of the defendant's supervised release, the supervised release may be revoked. Upon such
3 revocation, notwithstanding any other provision of this agreement, the defendant may be
4 required to serve an additional term of imprisonment or the defendant's sentence may
5 otherwise be altered.

6 j. The defendant and the government agree that this agreement does not in any
7 manner restrict the actions of the government in any other district or bind any other United
8 States Attorney's Office.

9 k. This plea agreement is contingent on the guilty pleas of all co-defendants in
10 this case. If any of the co-defendants do not plead guilty, the government reserves the right
11 to withdraw from the plea agreement.

12 Disclosure of Information to U.S. Probation:

13 The defendant understands the government's obligation to provide all information
14 in its file regarding the defendant to the United States Probation Office.

15 The defendant understands and agrees to cooperate fully with the United States
16 Probation Office in providing:

17 a. All criminal history information, i.e., all criminal convictions as defined
18 under the Sentencing Guidelines.

19 b. All financial information, i.e., present financial assets or liabilities that relate
20 to the ability of the defendant to pay a fine or restitution.

21 c. All history of drug and alcohol abuse which would warrant a treatment
22 condition as part of sentencing.

23 d. All history of mental illness or conditions which would warrant a treatment
24 condition as part of sentencing.

25 Reinstitution of Prosecution:

26 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any
27 court in a later proceeding, the government will be free to prosecute the defendant for all
28 charges as to which it has knowledge, and any charges that have been dismissed because

1 of this plea agreement will be automatically reinstated. In such event, the defendant waives
2 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth
3 Amendment to the Constitution as to the delay occasioned by the later proceedings.

4 AGREEMENT AS TO FORFEITURE

5 a. The defendant, Sebastian Nido-Valenzuela, admits that he knowingly and
6 fraudulently exported one Glock model 38 .45 GAP caliber pistol in violation of Title 18,
7 United States Code, Section 554(a), which has a total value of \$500.00.

8 b. The defendant further admits that the firearm represents property involved in
9 the commission of the offense, and is therefore forfeitable pursuant to Title 18, United
10 States Code, Section 924(d); and Title 28, United States Code, Section 2461(c).

11 c. The defendant admits that the firearm has been transferred, sold to, or
12 deposited with a third party, or placed beyond the jurisdiction of the court and is no longer
13 available for forfeiture as described in Title 21, United States Code, Section 853(p)(1).

14 d. The defendant knowingly and voluntarily agrees to the entry of a substitute
15 assets judgment and agrees to pay and forfeit the amount of \$500.00 in United States
16 currency, as a substitute asset in lieu of, and in satisfaction of, the forfeiture of the firearm,
17 as authorized by Title 21, United States Code, Section 853(p)(2); as incorporated by Title
18 28, United States Code, Section 2461(c).

19 e. The defendant agrees to pay in full \$500.00 in United States currency, via
20 cashier's checks in consecutive monthly installments, made payable to the United States
21 Marshals Service, Sandra O'Connor Courthouse, Suite 270, Attention: AFD, 401 W.
22 Washington St., SPC-64, Phoenix, Arizona 85003-2159.

23 f. In the event that the defendant does not remit the cashier's checks totaling the
24 amount of \$500.00 in United States currency to the government, the defendant knowingly
25 and voluntarily agrees, that pursuant to Title 21, United States Code, Section 853(p), the
26 United States will seek forfeiture of any other property of said defendant, up to the value
27 of the firearm (\$500.00 in United States currency), including but not limited to all property,
28 both real and personal, owned by the defendant.

1 g. The defendant acknowledges that failure to pay on or satisfy the \$500.00 in
2 United States currency judgment could allow for referral of the debt to the United States
3 Department of Treasury for the purpose of collecting debts through the Treasury Offset
4 Program. Under this program, the Department of Treasury will reduce or withhold any
5 eligible Federal payments by the amount of the debt. This “offset” process is authorized
6 by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act
7 of 1996 and the Internal Revenue Code.

8 h. The defendant knowingly and voluntarily agrees to consent to the entry of
9 orders of forfeiture for the firearm, or any assets that are related to satisfying the \$500.00
10 in United States currency, or any other assets, or seized property that are related to
11 satisfying the forfeiture, covered by this agreement. The defendant waives the requirements
12 of Federal Rules of Criminal Procedure, Rule 32.2 regarding notice of the forfeiture in the
13 charging instrument, announcement of the forfeiture at sentencing, and incorporation of
14 the forfeiture in the judgment.

15 i. The defendant knowingly and voluntarily agrees to waive all interest in the
16 firearm or other property that may be seized, in any administrative, civil or criminal judicial
17 proceeding, whether state or federal, which may be initiated.

18 j. The defendant acknowledges that he understands that the forfeiture of the asset
19 is part of the sentence that may be imposed in this case and waives any failure by the Court
20 to advise him of this, pursuant to Federal Rule of Criminal Procedure 11(b)(1)(J), at the
21 time his guilty plea is accepted.

22 k. The defendant knowingly and voluntarily agrees to waive all constitutional,
23 legal, and equitable defenses to all constitutional and statutory challenges in any manner
24 (including direct appeal, habeas corpus, any jeopardy defense or claim of double jeopardy,
25 or any other means), and knowingly and voluntarily agrees to waive any claim or defense
26 under the Eighth Amendment to the United States Constitution, including any claim of
27 excessive fine or punishment, to any forfeiture carried out in accordance with this plea
28 agreement on any grounds.

1 l. The defendant knowingly and voluntarily agrees to hold the United States, its
2 agents and employees harmless from any claims whatsoever in connection with any seizure
3 or forfeiture of the assets, or forfeiture of any other property that is related to satisfying the
4 \$500.00 in United States currency, covered by this agreement.

5 m. The defendant knowingly and voluntarily agrees and understands that the
6 forfeiture of the asset carried out in accordance with this plea agreement including any
7 payment made by the defendant to satisfy the \$500.00 in United States currency, shall not
8 be treated as satisfaction of any assessment, fine, restitution, cost of imprisonment, or any
9 other penalty this Court may impose upon the defendant in addition to the forfeiture.

10 n. The defendant agrees that the forfeiture provisions of this agreement are
11 intended to, and will, survive him, notwithstanding the abatement of any underlying
12 criminal conviction after the execution of this agreement. The forfeitability of any
13 particular property pursuant to this agreement shall be determined as if defendant had
14 survived, and that determination shall be binding on defendant's heirs, successors, and
15 assigns until the agreed forfeiture is collected in full.

16 o. The defendant shall receive credit for payments made by co-defendant Javier
17 Heras-Rodriguez in an amount not to exceed \$13,415.00.

18 Waiver of Defenses and Appeal Rights:

19 The defendant waives any and all motions, defenses, probable cause determinations,
20 and objections that the defendant could assert to the information or indictment, or to the
21 petition to revoke, or to the Court's entry of judgment against the defendant and imposition
22 of sentence upon the defendant providing the sentence is consistent with this agreement.
23 The defendant further waives: (1) any right to appeal the Court's entry of judgment against
24 defendant; (2) any right to appeal the imposition of sentence upon defendant under Title
25 18, United States Code, Section 3742 (sentence appeals); (3) any right to appeal the district
26 court's refusal to grant a requested variance; (4) any right to collaterally attack defendant's
27 conviction and sentence under Title 28, United States Code, Section 2255, or any other
28 collateral attack; and (5) any right to file a motion for modification of sentence, including

1 under Title 18, United States Code, Section 3582(c) (except for the right to file a
2 compassionate release motion under 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of
3 such a motion). The defendant acknowledges that this waiver shall result in the dismissal
4 of any appeal or collateral attack the defendant might file challenging his conviction or
5 sentence in this case. If the defendant files a notice of appeal or a habeas petition,
6 notwithstanding this agreement, the defendant agrees that this case shall, upon motion of
7 the government, be remanded to the district court to determine whether the defendant is in
8 breach of this agreement and, if so, to permit the government to withdraw from the plea
9 agreement. This waiver shall not be construed to bar a claim by the defendant of
10 “prosecutorial misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-
11 01 (2015)) or a claim by the defendant of ineffective assistance of counsel.

12 Plea Addendum

13 This written plea agreement, and any written addenda filed as attachments to this
14 plea agreement, contain all the terms and conditions of the plea. Any additional
15 agreements, if any such agreements exist, shall be recorded in separate documents and may
16 be filed with the Court under seal. Accordingly, additional agreements, if any, may not be
17 in the public record.

18 WAIVER OF DEFENDANT’S RIGHTS AND FACTUAL BASIS

19 Waiver of Rights

20 I have read each of the provisions of the entire plea agreement with the assistance
21 of counsel and understand its provisions. I have discussed the case and my constitutional
22 and other rights with my attorney. I understand that by entering my plea of guilty I will be
23 giving up my rights to plead not guilty, to trial by jury, to confront, cross-examine, and
24 compel the attendance of witnesses, to present evidence in my defense, to remain silent
25 and refuse to be a witness against myself by asserting my privilege against self-
26 incrimination -- all with the assistance of counsel -- and to be presumed innocent until
27 proven guilty beyond a reasonable doubt.

1 I agree to enter my guilty plea as indicated above on the terms and conditions set
2 forth in this agreement.

3 I have been advised by my attorney of the nature of the charges to which I am
4 entering my guilty plea. I have further been advised by my attorney of the nature and range
5 of the possible sentence.

6 My guilty plea is not the result of force, threats, assurances or promises other than
7 the promises contained in this agreement. I agree to the provisions of this agreement as a
8 voluntary act on my part, rather than at the direction of or because of the recommendation
9 of any other person, and I agree to be bound according to its provisions.

10 I fully understand that, if I am granted probation or placed on supervised release by
11 the court, the terms and conditions of such probation/supervised release are subject to
12 modification at any time. I further understand that, if I violate any of the conditions of my
13 probation/supervised release, my probation/supervised release may be revoked and upon
14 such revocation, notwithstanding any other provision of this agreement, I may be required
15 to serve an additional term of imprisonment or my sentence may otherwise be altered. I
16 agree that any Guidelines Range referred to herein or discussed with my attorney is not
17 binding on the court and is merely an estimate.

18 I agree that this written plea agreement contains all the terms and conditions of my
19 plea and that promises made by anyone (including my attorney), and specifically any
20 predictions as to the guideline range applicable, that are not contained within this written
21 plea agreement are without force and effect and are null and void.

22 I am satisfied that my defense attorney has represented me in a competent manner.

23 I am fully capable of understanding the terms and conditions of this plea agreement.
24 I am not now on or under the influence of any drug, medication, liquor, or other intoxicant
25 or depressant, which would impair my ability to fully understand the terms and conditions
26 of this plea agreement.

27
28 ///

1 Factual Basis:

2 I agree that the following facts accurately describe my conduct in connection with
 3 the offense to which I am pleading guilty; and, that if this matter were to proceed to trial,
 4 the government could prove the elements of the offense beyond a reasonable doubt based
 5 on the following facts:

6 The defendant, Sebastian Nido-Valenzuela, along with his co-defendants in
 7 this case, was a member of a conspiracy to smuggle weapons from the United
 8 States into Mexico.

9 On September 18, 2021, in the District of Arizona, the defendant purchased
 10 a Glock model 38 .45 GAP caliber pistol from a private seller and arranged
 11 with co-defendant Javier Heras-Rodriguez to have the firearm unlawfully
 exported from the United States into Mexico.

12 The firearm the defendant purchased and arranged to unlawfully export into
 13 Mexico qualifies as a United States Commerce Control List item and
 14 therefore is prohibited by law for export from the United States into Mexico
 15 without a valid license. Neither the defendant nor any other individual
 16 involved in the attempted export of the firearm had a license or any other
 lawful authority to export it from the United States into Mexico.

17 11-8-22
 18 Date

Sebastian Nido
 Sebastian Nido-Valenzuela
 Defendant

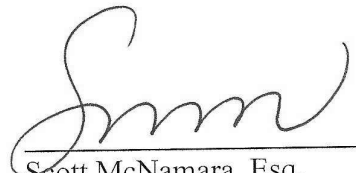
20 **DEFENSE ATTORNEY'S APPROVAL**

21 I have discussed this case and the plea agreement with my client, in detail and have
 22 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
 23 constitutional and other rights of an accused, the factual basis for and the nature of the
 24 offense to which the guilty plea will be entered, possible defenses, and the consequences
 25 of the guilty plea including the maximum statutory sentence possible and Defendant's
 26 waiver of his right to appeal. I have further discussed the sentencing guideline concept
 27 with the defendant. No assurances, promises, or representations have been given to me or
 28

1 to the defendant by the United States or by any of its representatives which are not
2 contained in this written agreement.

3 I concur in the entry of the plea as indicated above and on the terms and conditions
4 set forth in this agreement as in the best interests of my client. I agree to make a bona fide
5 effort to ensure that the guilty plea is entered in accordance with all the requirements of
6 Fed. R. Crim. P. 11.

7
8 11-08-2022
9 Date


10 Scott McNamara, Esq.
11 Attorney for the defendant

12 **GOVERNMENT'S APPROVAL**

13 I have reviewed this matter and the plea agreement. I agree on behalf of the United
14 States that the terms and conditions set forth are appropriate and are in the best interests of
15 justice.

16 GARY M. RESTAINO
17 United States Attorney
18 District of Arizona

19 **ANGELA**
WOOLRIDGE

Digitally signed by ANGELA
WOOLRIDGE
Date: 2022.10.31 15:36:06
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Date

ANGELA W. WOOLRIDGE
Assistant U.S. Attorney